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IN THE COURT OF APPEALS OF INDIANA

IN RE: THE MARRIAGE OF	)	
	)	
MARILYN DALUISIO,[1]	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 15A01-0804-CV-177
	)	
GENE DALUISIO,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause No. 15C01-0711-MI-32

October 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

[1] We note that the documents before us contain a discrepancy in the spelling of Appellant's name. We have chosen to use Marilyn, based upon Appellant's signature on the order for payment of child support. Appellant's App. at 24.

Marilyn Daluisio ("Wife") appeals a trial court judgment vacating an income withholding child support order against Gene Daluisio ("Husband"). The dispositive issue is whether the trial court erred in concluding that the California IWO was unenforceable on its face. We affirm.

On January 2, 1974, Los Angeles Superior Court in California ("the California court") issued a final judgment dissolving Husband and Wife's marriage. On November 19, 1976, the California court issued a modification order, in which Husband was ordered to pay a total of $320.00 per month as child support for the couple's two children: James, born December 9, 1968, and Vincent, born July 28, 1970. Husband relocated to Indiana and did not make any child support payments after March 1975.

Sometime in 2006, Husband received a call from a representative of Support Kids, Inc. ("Support Kids"), a Texas-based child support collection agency, regarding a significant child support arrearage. On August 24, 2007, Support Kids filed an IWO for child support in the California court. On October 22, 2007, Husband's Indiana employer, Argosy Casino, received by certified mail both the IWO and the underlying 1976 child support order. On that date, Argosy began garnishing Husband's wages in the amount of $661.15 per pay period, which represented fifty percent of his disposable pay.

On November 27, 2007, Husband filed a petition in the trial court to set aside and stay enforcement of the California IWO.[2] The trial court held a hearing on January 16, 2008. On January 28, 2008, the court entered sua sponte findings of fact and conclusions thereon,

[2] To the extent that Wife challenges Husband's petition as untimely under Indiana Trial Rule 59 and Indiana Appellate Rule 9, we fail to see the applicability of these rules to Husband's challenge of the IWO.

vacating the IWO as unenforceable and staying the garnishment of Husband's wages. Wife filed a motion to correct error, which the trial court denied. This appeal ensued.

Wife challenges the trial court's conclusion that the California IWO was unenforceable. When the trial court enters findings and conclusions sua sponte, "the specific findings control only as to the issues they cover, while a general judgment standard applies to any issues upon which the court has not found." *Harris v. Harris*, 800 N.E.2d 930, 934 (Ind. Ct. App. 2003), *trans. denied* (2004). We apply a two-tiered standard, in which we determine first whether the evidence supports the findings and then whether the findings support the judgment. *Id*. at 934-35. We reverse only when the judgment is clearly erroneous, meaning that it is unsupported by the findings and conclusions after considering only the evidence and reasonable inferences favorable to the judgment. *Id*. at 935. Although we defer substantially to the findings of fact, we do not defer to the questions of law; rather, we evaluate questions of law de novo. *Id*.

As a preliminary matter, we address Wife's contention that the trial court erred in applying Indiana law to the California IWO issued to collect child support arrearages. Indiana's Uniform Interstate Family Support Act ("UIFSA") provides in pertinent part, "The law of the *issuing state* governs the (1) nature, extent, amount, and duration of current payments and other obligations of support; and (2) payment of arrearages under the order." Ind. Code § 31-18-6-4(a) (emphasis added). We have held this language to be plain and unambiguous in its requirement governing choice of law. *Brickner v. Brickner*, 723 N.E.2d 468, 472 (Ind. Ct. App. 2000), *trans. denied*. Here, Support Kids filed the 2007 IWO in a

California court, and a California court issued the underlying 1976 child support order that accompanied the IWO. Thus, UIFSA supports the application of California rather than Indiana law.

The Full Faith and Credit for Child Support Orders Act ("FFCCSOA") further supports the application of California law: "In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the *law of the State of the court that issued the order*." 28 U.S.C. § 1738B(h)(2) (emphasis added). We conclude that the trial court erred in applying Indiana rather than California law to the IWO. However, based on our application of California law to the enforceability issue, the error does not constitute grounds for reversal.

Wife asserts that the trial court erred in concluding that the IWO was unenforceable on its face. She specifically challenges the following conclusions:

> 3. The purported Income Withholding Order is facially defective in that it fails to provide the alleged amount of arrears, interest, costs, attorney fees, duration and/or termination of the Order as required under I.C. 31-18-5-1.1.
>
> ….
>
> 5. The purported Income Withholding Order is facially defective in that it fails to provide the alleged amount of arrears or an underlying Order setting out the arrearage judgment as required under Cal Fam Code 5246(c)(2).[3]
>
> ….
>
> 7. The purported Income Withholding Order is fatally defective in that it is not signed or otherwise executed by a Judicial or Administrative official of any State which is only allowed under Cal Fam Code 5246(b) when service[s] are being provided by the local support agency.

[3] The trial court's reference to subsection (c)(2) is a scrivener's error, as there is no such subsection. Instead, the applicable subsection is (d)(2).

Appellant's App. at 7-8. As discussed, California law applies in this case; therefore, the trial court's conclusion number 3, based on the requirements set forth in the Indiana statute, is clearly erroneous. Nonetheless, we conclude that the trial court properly vacated the IWO for two reasons: (1) it failed to specify the total amount of the arrearage; and (2) it was not properly executed.

With regard to requirements for specificity of arrearage totals, California Family Code Section 5246(d)(2) provides,

> If the underlying court order for support does not provide for an arrearage payment, or if an additional arrearage accrues after the date of the court order for support, the local child support agency may send an order/notice to withhold income for child support that shall be used for the purposes described in this section directly to the employer which *specifies the updated arrearage amount and directs the employer to withhold an additional amount to be applied towards liquidation of the arrearages* not to exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code.[4]

(Emphasis added.)

Here, the IWO directed Husband's employer as follows regarding the amount and duration of the garnishment of his wages: "You are required by law to deduct these amounts from the employee's/obligor's income until further notice. $ 50% [p]er pay period past-due child support … for a total of $ 50% per pay period to be forwarded to the payee below." Appellant's App. at 38. At the hearing on his petition to stay enforcement of the IWO, Husband testified that a representative of Support Kids had given him numerous total arrearage figures, ranging from $40,000.00 to $120,000.00. Tr. at 17. Although the amount

garnished per pay period can be determined by reference to Husband's pay stub, the IWO's failure to specify the duration of garnishment made the total arrearage impossible to calculate. The trial court properly concluded that the IWO lacked the specificity required under California Family Code Section 5246.

Regarding the execution of the IWO, the trial court concluded that the absence of a signature rendered it defective and therefore unenforceable. California Family Code Section 5246(b) provides,

> (b) In lieu of an earnings assignment order signed by a judicial officer, *the local child support agency* may serve on the employer a notice of assignment in the manner specified in Section 5232. An order/notice to withhold income for child support shall have the same force and effect as an earnings assignment order signed by a judicial officer. An order/notice to withhold income for child support, when used under this section, shall be considered a notice and *shall not require the signature of a judicial officer*.

(Emphases added.)

Here, the IWO lacked the signature of a judicial officer. The "Signature and Date" line on the IWO form contains only a stamped date of August 24, 2007. Appellant's App. at 38. The name of the issuing official is printed as "ROBERT SCHNIDER." *Id*. At the hearing, Wife's counsel indicated that Robert Schnider was the judge who presided over the 1976 divorce proceedings and that Judge Schnider neither signed nor issued the 2007 IWO. Tr. at 28.

Wife argues that because she was attempting to collect child support through an agency rather than through the court, she was exempt from the requirement of a judicial

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[4] 15 U.S.C.A. § 1673(b) provides that the maximum part of disposable earnings subject to garnishment to enforce a support order shall not exceed fifty percent of the employee's earnings for the

signature. However, the statute clearly states that an exemption applies only when the agency utilized to collect child support is the county agency empowered by statute to handle cases under Title IV-D: "This section applies only to Title IV-D cases where support enforcement services are being provided by *the local child support agency* pursuant to Section 17400." CAL. FAM. CODE § 5246(a) (emphasis added). California Family Code Section 17400 provides, "Each county shall maintain a local child support agency, as specified in Section 17304, that shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations." California Family Code Section 17304 specifically provides that each such county agency will be referred to as "the local child support agency."

Here, Wife did not pursue an IWO through the local child support agency.[5] Instead, she secured the services of a Texas-based child support collection agency. As such, her IWO was not exempt from the requirement of a judicial signature. Thus, the trial court properly concluded that the IWO was defective and unenforceable for lack of proper execution. Therefore, we affirm.

Affirmed.

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workweek.

[5] On the IWO form, Support Kids indicated that they were pursuing the IWO through the court and not as a IV-D agency that would be exempt from a judicial signature.

KIRSCH, J., and VAIDIK, J., concur.